D.B. CIVIL SPECIAL APPEAL (WRIT) NO.632/2007

The State of Rajasthan & Ors. Vs. Shri Pratap Sing.

Date : 13.7.2007

PRESENT

HON'BLE ACTING CHIEF JUSTICE MR. RAJESH BALIA
HON'BLE MR. JUSTICE MAHESH CHANDRA SHARMA

Mr. L.R. Upadhyay, Dy. Government Advocate.
Mr. P.S. Chundawat for the respondents.

We have heard learned counsel for the parties.

This appeal is directed against the judgment of learned Single Judge dated 16th January, 2007 allowing the writ petition filed by the respondent, an employee of the Rajasthan Police Department who superannuated on 31st July, 1984.

The facts which are not in dispute are that the petitioner was on the deputation to Intelligence Bureau, Ministry of Home Affairs, Government of India for a period of 5 years and has also received promotion there. At the time of his retirement, he was working as

ACIO Grade I and his basic pay as on the date of retirement after receiving last increment w.e.f. 1.5.1984 was Rs.1550/- per month.

By order dated 28.5.1984 the petitioner was ordered to return to his parent department w.e.f. afternoon on 31.7.1984.

Considering the order dated 28.5.1984 as terminating the petitioner's deputation and the date of return of the incumbent to the parent department on the date of retirement last drawn the pay of the petitioner was assigned to be the pay at which he would have been fixed on return from the deputation, his retiral dues including pension was fixed. For this purpose his salary was taken to be Rs.1150/- per month and not Rs.1552/- which he actually drew upto 31.7.1984.

Not getting any relief at the hand of appellant the respondent-incumbent preferred writ petition out of which this appeal has arisen.

The learned Single Judge finding that the incumbent's last drawn emoluments on the post from which he was retired at Rs.1550/-, he was entitled to pay to be fixed on that premises and allowed the writ petition. Hence, this appeal before us.

The learned counsel has contended that before the petitioner had actually retired, he has been repatriated to the parent department on the alleged post on which his salary was Rs.1150/- and, therefore, he was entitled to pension only on that basis.

He drew our attention of the order repatriating the petitioner.

On the perusal of the order Ex.4, it becomes more than clear that he has been repatriated only w.e.f. afternoon of 31st July, 1984 i.e. to say upto 31st July, 1984, the petitioner was to draw salary at Rs.1550/- per month from the department of deputation and he was not to draw his salary at Rs.1150/- for a single day inasmuch as if the petitioner-respondent had been

relieved from place of his deputation only on afternoon of 31.7.1994 his full emoluments upto that date were to be drawn from the department of Deputation. W.e.f. 1.8.1984, the incumbent stood retired, he was entitled to only retiral benefits, which ex hypothesis stood determined with effect from the time he stood retired and from 1st August, 1984 the petitioner was no more in service.

In that view of the matter, the last drawn emoluments of the petitioner could have not been considered at Rs.1150/-.

We are, therefore, in agreement with the conclusion drawn by the learned Single Judge.

The appeal fails and is hereby dismissed.

[MAHESH CHANDRA SHARMA],J. [RAJESH BALIA], Actg.C.J.

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